

(6) *Nonqualified operations.* Non-qualified operations for qualified agreement vessels include:

(i) Positioning vessels in support of domestic operations prohibited by section 607 of the Act;

(ii) Use of barges as docks and ramps;

(iii) Except as provided in paragraphs (c)(7) (i) and (ii) of this section:

(A) Foreign-to-foreign trade, consisting of voyages originating and ending in foreign ports, with no intermediate domestic cargo operation, and

(B) Trade from foreign ports to and from U.S. oil rigs in international waters; and

(iv) Ship assist work, including bunkering, in support of contiguous domestic, foreign-flag or U.S.-flag foreign-to-foreign operations.

(7) *Permissible operations.* Permissible operations for qualified agreement vessels include:

(i) Foreign-to-foreign trade in the case of vessels operating as part of U.S.-flag service and carrying cargo originating in or destined for U.S. ports, i.e., U.S.-flag feeder vessels;

(ii) Foreign-to-foreign trade, including the lightering of foreign-flag vessels, in the case of vessels carrying liquid or dry bulk cargoes when the carrier has demonstrated to the Administrator:

(A) The need for such foreign-to-foreign shipments (as required by section 905 of the Act and paragraph (c)(iii) of this section), and

(B) That the proposed cargo would qualify as liquid or dry bulk cargo;

(iii) Ship assist work, including lightering or shifting of a vessel at the end or beginning of a noncontiguous domestic or U.S. foreign trade voyage. In addition, the lightering of foreign-flag vessels in U.S. ports is permitted.

(8) *United States construction.* An agreement vessel is considered to be of United States construction if:

(i) It is built entirely in a shipyard or shipyards within any of the United States and the Commonwealth of Puerto Rico;

(ii) All components of the hull and superstructure are fabricated in the United States; and

(iii) The vessel is assembled entirely in the United States.

(d) *Agreement vessels*—(1) *Definition.* The term *agreement vessel* means any eligible or qualified vessel which is subject to an agreement.

(2) *Scope of the term "agreement vessel."* For purposes of generating ceilings and making qualified withdrawals the term *agreement vessel* includes containers, trailers or barges which are part of the complement of an agreement vessel. The complement is limited to three times the container, trailer or barge capacity of the vessel, unless the Maritime Administrator shall agree to a different complement.

[41 FR 4265, Jan. 29, 1976, as amended at 55 FR 34928, Aug. 27, 1990]

§ 390.6 Administration of the agreement.

(a) *In general.* The Maritime Administrator will administer and enforce the agreement in a manner which will insure that the fund is properly established, that the assets in the fund are used to accomplish the program and that the party fully complies with all obligations and responsibilities. This section specifies the reports which must be submitted to the Maritime Administrator and sets forth the procedures for administering the agreement.

(b) *Reporting requirements*—(1) *In general.* This paragraph describes the reports required to be submitted to the Maritime Administrator by the party.

(2) *Submission dates.* Reports must be submitted annually, in triplicate, for the party's taxable year not later than 90 days after the close of each reporting period. An affidavit regarding the operation of qualified agreement vessels as required by paragraph (b)(7) of this section shall be submitted concurrently with each annual report.

(3) *Cumulation.* The annual report submitted following the close of the party's taxable year shall be cumulative for the party's entire taxable year.

(4) *Certification.* The annual report shall be accompanied by an opinion of an independent certified public accountant to the effect that exhibits (see paragraph (b)(5) of this section) composing the accounting have been

prepared in accordance with all published orders, rules, regulations and instructions issued or adopted by the Maritime Administrator.

(5) *Format.* The reports shall consist of the following exhibits:

(i) “Exhibit A”—a summary of cash, securities and stock on deposit (showing the adjusted basis for securities and stock), including a subtotal of cash, securities and stock on deposit, net amount of accrued deposits to and accrued withdrawals from the fund and the fund total at the end of the period, and if applicable, a summary of the portion of the fund which represents a “CCF: Security Amount” pursuant to an Agreement Covering the Dual Use of a Capital Construction Fund;

(ii) “Exhibit A-1”—a summary of balances in all cash accounts within the fund at the end of the period;

(iii) “Exhibit A-2”—a summary of the securities and stock within the fund at the end of the period (showing both the adjusted basis and fair market value of each item);

(iv) “Exhibit A-3”—a summary of the accrued deposits to and accrued withdrawals from the fund at the end of the period;

(v) “Exhibit B”—a transcript of transactions occurring within the fund during the period by date;

(vi) “Exhibit C”—a summary showing the opening balance, additions thereto due to deposits to the fund, subtractions therefrom due to withdrawals from the fund, and the closing balance for the period for each of the three separate accounts: ordinary income account, capital gains account and capital account; and

(vii) “Exhibit D”—a summary, by vessel, of the qualified withdrawals made from the fund during the period.

(6) *Sample report.* A sample report is contained in appendix III of this part.

(7) *Affidavit.* An official of the party who is knowledgeable about the operation of the party’s qualified agreement vessels shall submit an affidavit for each taxable year indicating that the party’s qualified agreement vessels operated only in qualified trades during such taxable year, or if any such vessel operated in a trade other than a qualified trade, the details of such operation. See §390.5(c) of this part for a

description of what constitutes a qualified trade. A sample affidavit is contained in appendix V of this part.

(8) *Failure to submit reports.* The failure by a party to make the timely submission of any report or affidavit required by this section shall constitute a material breach of the agreement unless the Maritime Administrator shall determine that such failure was excusable. See §390.13 (relating to the failure to fulfill a substantial obligation under the agreement).

(c) *Review in the event of changed circumstances.* Each agreement provides that the party shall promptly inform the Maritime Administrator of any change in circumstances which affects its agreement. Such changes may be mere form, such as a change of the party’s name, or substantive such as the sale of an eligible agreement vessel. The Maritime Administrator may require a full review of the agreement if in his opinion the changed circumstances materially affect the agreement.

(d) *Modification of agreement*—(1) *In general.* The agreement is subject to modification and amendment by mutual consent. However, except in special circumstances, the Maritime Administrator will not consent to modification or amendment of the standard part of the agreement unless such modification or amendment is of uniform application to similarly situated parties. The Maritime Administrator will normally agree to modification or amendment of the schedules subject to the restriction in paragraph (d)(2) of this section.

(2) *Limitations on modification of schedules.* The Maritime Administrator will not agree to modification or amendment of the schedules (as described in §390.4) when, in his opinion, such modification or amendment delays imposition of Federal Income Tax in a manner not contemplated or authorized by the Act, or if the proposed modification or amendment would not be in consonance with the policies of the Act, these rules and regulations or the joint regulations.

(e) *Fund adjustment upon modification.* Upon application by a party for modification or amendment of the agreement, the Maritime Administrator will

determine whether the requested modification or amendment would result in an amount held in the fund in excess of an amount determined to be necessary or appropriate to carry out the program. If such an excess is created in the fund by such modification or amendment, the Maritime Administrator will require a nonqualified withdrawal (as defined in §390.10) of such excess as a condition to the modification or amendment.

[41 FR 4265, Jan. 29, 1976, as amended at 41 FR 39751, Sept. 16, 1976; 55 FR 34928, Aug. 27, 1990]

§390.7 Deposits into the fund.

(a) *In general*—(1) *Source of deposits.* Section 607(b) of the Act provides ceilings within which fund deposits may be made. This section provides rules for the qualification of depositories, timing of deposits, the type of property which may be deposited and the level of deposits.

(2) *Tax aspects of deposits.* For the Federal Income Tax aspects of deposits into a fund, see section 607(d) of the Act and §3.3 of the joint regulations (§391.3 of this chapter).

(b) *Depositories*—(1) *In general.* Section 607(c) of the Act provides that amounts in a fund must be kept in the depository or depositories specified in the agreement and be subject to such trustee or other fiduciary requirements as the Maritime Administrator may specify.

(2) *Qualifications.* The Maritime Administrator has established general qualifications for depositories for all maritime programs authorized under the Act, including the capital construction fund program. The general qualifications are published in Part 351 of this title.

(3) *Fiduciary requirements.* Except in unusual circumstances, the Maritime Administrator will not impose special trustee or other fiduciary requirements upon depositories of a fund. For rules relating to a fund held in trust for investment purposes, see paragraph (h) of this section.

(4) *Type and name of accounts.* Unless otherwise specified in the agreement, the party may select the type or types of accounts in which assets of the fund may be deposited. For example, the

party may select a savings account for cash and a trust account for intangible property which is held in the fund. Each account shall be in the name of the party and identified as a capital construction fund account.

(5) *Compensating balances.* The obligation of the assets in the fund as a compensating balance shall constitute a material breach of the agreement.

(c) *Timing of deposits*—(1) *In general.* Section 607(d)(2) of the Act provides that deposits shall not be taxable only when they are made in accordance with the agreement and not later than the time provided in the joint regulations.

(2) *Deposits prior to the time provided in joint regulations.* The party may make deposits for any taxable year prior to the time provided in joint regulations in accordance with the following rules:

(i) Amounts representing taxable income attributable to the operation of agreement vessels for a taxable year may be deposited at any time during such taxable year, and thereafter within the time provided for in the joint regulations, based upon the party's estimated Federal taxable income for such vessels for the entire taxable year;

(ii) Amounts representing net proceeds from the sale or other disposition (including mortgaging) with respect to agreement vessels may be deposited when accrued and thereafter within the time provided for in the joint regulations;

(iii) Amounts representing receipts from the investment or reinvestment of amounts held in a fund may be deposited when accrued and thereafter within the time provided for in the joint regulations; and

(iv) Amounts representing depreciation with respect to agreement vessels for a taxable year may be deposited at any time during such taxable year, and thereafter within the time provided for in the joint regulations.

(3) *Deposits required prior to the time provided in joint regulations.* The Maritime Administrator may require that deposits be made earlier than the latest time provided for in the joint regulations. Generally, the Maritime Administrator will require early deposits only when necessary for the party to meet its agreed upon obligations.